

United States. The amounts of these certificates may not exceed specified percentages of the producers' verified creditable wages in the insular possessions (90% of wages paid for the production of the first 300,000 duty-free units and declining percentages, established by the Secretaries, of wages paid for incremental production up to 750,000 units by each producer) nor an aggregate annual amount for all certificates exceeding \$5,000,000 adjusted for growth by the ratio of the previous year's gross national product to the gross national product in 1982. However, the law specifies that watch producer benefits are not to be diminished as a consequence of extending the duty refund to jewelry manufacturers. In the event that the amount of the calculated duty refunds for watches and jewelry exceeds the total aggregate annual amount that is available, the watch producers shall receive their calculated amounts and the jewelry producers would receive amounts proportionately reduced from the remainder. Refund requests are governed by regulations issued by the Department of the Treasury (*see* 19 CFR 7.4).

(c) Section 2401(a) of Pub. L. 106-36 and additional U.S. note 5 to chapter 91 of the HTSUS authorize the Secretaries to issue regulations necessary to carry out their duties. The Secretaries may cancel or restrict the certificate of any insular manufacturer found violating the regulations.

§ 303.16 Definitions and forms.

(a) *Definitions.* For purposes of the subpart, unless the context indicates otherwise:

(1) *Act* means Pub. L. 97-446, enacted 12 January 1983 (19 U.S.C. 1202), 96 Stat. 2329, as amended by Pub. L. 103-465, enacted on 8 December 1994, 108 Stat. 4991 and, as amended by Pub. L. 106-36, enacted on 25 June 1999.

(2) *Secretaries* means the Secretary of Commerce and the Secretary of the Interior or their delegates, acting jointly.

(3) *Director* means the Director of the Statutory Import Programs Staff, International Trade Administration, U.S. Department of Commerce.

(4) *Sale or transfer of a business* means the sale or transfer of control, whether

temporary or permanent, over a firm which is eligible for a jewelry program duty-refund to any other firm, corporation, partnership, person or other legal entity by any means whatsoever, including, but not limited to, merger and transfer of stock, assets or voting trusts.

(5) *New firm* means a jewelry company which has requested in writing to the Secretaries permission to participate in the program. In addition to any other information required by the Secretaries, new firm requests shall include a representation that the company agrees to abide by the laws and regulations of the program, an outline of the company's anticipated economic contribution to the territory (including the number of employees) and a statement as to whether the company is affiliated by ownership or control with any other watch or jewelry company in the insular possessions. The Secretaries will then review the request and make a decision based on the information provided and the economic contribution to the territory. A new jewelry firm may not be affiliated through ownership or control with any other jewelry duty-refund recipient. In assessing whether persons or parties are affiliated, the Secretaries will consider the following factors, among others: stock ownership; corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretaries may not find that control exists on the basis of these factors unless the relationship has the potential to affect decisions concerning production, pricing, or cost. Also, no jewelry duty-refund recipient may own or control more than one watch duty-refund recipient.

(6) *Jewelry producer* means a company, located in one of the insular territories (*see* paragraph (a)(8) of this section), that produces jewelry provided for in heading 7113, HTSUS, which meets all the U.S. Customs Service requirements for duty-free entry set forth in General Note 3(a)(iv), HTSUS, and 19 CFR 7.3, and has maintained its eligibility for duty refund benefits by complying with these regulations.

(7) *Unit of jewelry* means a single article, pair (example: earrings, cufflinks),

subassembly or component which is contained in HTSUS heading 7113.

(8) *Territories, territorial and insular possessions* refers to the insular possessions of the United States (i.e., the U.S. Virgin Islands, Guam, American Samoa and the Northern Mariana Islands).

(9) *Creditable wages* means all wages, up to an amount equal to 65% of the contribution and benefit base for Social Security as defined in the Social Security Act for the year in which the wages were earned, paid to permanent residents of the territories employed in the firm's manufacture of HTSUS heading 7113 articles of jewelry which are a product of the insular possessions and have met the U.S. Customs Service's criteria for duty-free entry into the United States, plus any wages paid for the repair of non-insular HTSUS heading 7113 jewelry up to an amount equal to 50 percent of the firm's total creditable wages. Excluded, however, are wages paid for outside consultants or other professional personnel, such as lawyers and accountants, or those persons not involved in the day-to-day assembly operations or servicing and maintenance of equipment and fixtures necessary for the assembly or manufacturing operations or the administrative work and security activities directly related to the operations of the company, such as gardeners or construction workers, plus any wages paid for the assembly of dutiable jewelry or for the repair of dutiable jewelry to the extent that such wages exceed the percentage set forth above. No more than two insular producers may have their wages credited for their portion of the wages paid for work on a single piece of jewelry which entered the U.S. free of duty under the program. Wages paid by the two producers will be credited proportionally provided both producers demonstrate to the satisfaction of the Secretaries that they worked on the same piece of jewelry, the jewelry received duty-free treatment into the U.S., and the producers maintained production and payroll records sufficient for the Departments' verification of the creditable wage portion (see § 303.17(b)). Wages paid to persons engaged in production of jewelry that has entered the U.S. both duty-free and

duty-paid may be credited proportionately *provided* the firm maintains production and payroll records adequate for the Departments' verification of the creditable wages portion (see Sec. 303.17(b)).

(10) *Dutiable jewelry* includes jewelry which does not meet the requirements for duty-free entry under General Note 3(a)(iv), HTSUS, and 19 CFR 7.3, contains any material which is the product of any country with respect to which Column 2 rates of duty apply or is ineligible for duty-free treatment pursuant to other laws or regulations.

(b) *Forms.* (1) *ITA—334P* "Annual Application for License to Enter Watches and Watch Movements into the Customs Territory of the United States." The Director shall issue instructions for jewelry manufacturers on the completion of the relevant portions of the form. The form must be completed annually by all jewelry producers desiring to receive a duty refund and, with special instructions for its completion, by producers who wish to receive the total annual amount of the duty refund in installments on a biannual basis.

(2) *ITA—360P* "Certificate of Entitlement to Secure the Refund of Duties on Watches and Watch Movements." This document authorizes a territorial jewelry producer to request the refund of duties on imports of watches, watch movements and parts therefor, with certain exceptions, up to a specified value. Certificates may be used to obtain duty refunds only when presented with a properly executed Form *ITA—361P*.

(3) *ITA—361P* "Request for Refund of Duties on Watches and Watch Movements." This form must be completed to obtain the refund of duties authorized by the Director through Form *ITA—360P*. After authentication by the Department of Commerce, it may be used for the refund of duties on items which were entered into the customs territory of the United States during a specified time period. Copies of the appropriate Customs entries must be provided with this form to establish a basis for issuing the claimed amounts. The forms may also be used to transfer

all or part of the producer's entitlement to another party (see Sec. 303.19(c)).

(The information collection requirements in paragraph (b)(1) were approved by the Office of Management and Budget under control number 0625-0040. The information collection requirements in paragraphs (b) (2) and (3) were approved under control number 0625-0134)

[64 FR 67150, Dec. 1, 1999, as amended at 65 FR 8049, Feb. 17, 2000; 66 FR 34812, July 2, 2001]

EFFECTIVE DATE NOTE: At 67 FR 77409, Dec. 18, 2002, § 303.16 was amended by adding paragraph (a)(11), effective Jan. 17, 2003. For the convenience of the user, the added text is set forth as follows:

§ 303.16 Definitions and forms.

(a) * * *

(11) *Permanent resident* means a person with one residence which is in the insular possessions or a person with one or more residences outside the insular possessions who meets criteria that include maintaining his or her domicile in the insular possessions, residing (i.e., be physically present for at least 183 days per year) and working in the territory at a program company, and maintaining his or her primary office for day-to-day work in the insular possessions.

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§ 303.17 Annual jewelry application.

(a) Form ITA-334P shall be furnished to producers by January 1 and must be completed and returned to the Director no later than January 31 of each calendar year.

(b) All data supplied are subject to verification by the Secretaries and no duty refund shall be made to producers until the Secretaries are satisfied that the data are accurate. To verify the data, representatives of the Secretaries shall have access to relevant company records including, but not limited to:

(1) Work sheets used to answer all questions on the application form, as specified by the instructions;

(2) Original records from which such data are derived;

(3) Records pertaining to ownership and control of the company;

(4) Records pertaining to all duty-free and dutiable shipments of HTSUS 7113 jewelry, including Customs entry documents, or the certificate of origin for the shipment, or, if a company did

not receive such documents from Customs, a certification from the consignee that the jewelry shipment received duty-free treatment, or a certification from the producer, if the producer can attest that the jewelry shipment received duty-free treatment;

(5) Records pertaining to corporate income taxes, gross receipts taxes and excise taxes paid by each producer in the territories;

(6) Customs, bank, payroll, and production records;

(7) Records on purchases of components and sales of jewelry, including proof of payment; and

(8) Any other records in the possession of the parent or affiliated companies outside the territory pertaining to any aspect of the producer's jewelry operations.

(c) Data verification shall be performed in the territories, unless other arrangements satisfactory to the Departments are made in advance, by the Secretaries' representatives by the end of February of each calendar year. In the event a company cannot substantiate the data in its application, the Secretaries shall determine which data will be used.

(d) Records subject to the requirements of paragraph (b) of this section, shall be retained for a period of two years following their creation.

[49 FR 17740, Apr. 25, 1984, as amended at 66 FR 34813, July 2, 2001]

§ 303.18 Sale or transfer of business.

(a) The sale or transfer of a business together with its duty refund entitlement shall be permitted with prior written notification to the Departments. Such notification shall be accompanied by certifications and representations, as appropriate, that:

(1) The transferee is neither directly nor indirectly affiliated with any other territorial duty refund jewelry recipient in any territory;

(2) The transferee will not modify the jewelry operations in a manner that will significantly diminish its economic contributions to the territory.

(b) At the request of the Departments, the transferee shall permit representatives of the Departments to inspect whatever records are necessary to establish to their satisfaction that